IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 338 of 2007

Jaspal Singh

....Appellant

Versus

Subedar Surendra Singh Kanwasi & 3 others

.....Respondents

Sri Dinesh Cauhan, learned counsel for the appellant.
Sri R.P. Nautiyal, learned counsel for respondent nos. 1 to 3
Sri Nandan Arya, Learned AGA for the State/respondent no. 4.

Dated: 05.09.2007

Hon'ble Dharam Veer, J.

This criminal appeal has been preferred under Section 378(4) of the The Code of Criminal Procedure, 1973 (*hereinafter referred to as Cr.P.C.)* against the judgment and order dated 14.11.1996 passed by Chief Judicial Magistrate, Chamoli-Gopeshwar in Criminal Case No.1199 of 1995, Jaspal Singh v. Surendra Singh & others, whereby the learned Chief Judicial Magistrate has acquitted the respondent No. 1-Subedar Surendra Singh Kanwasi u/s 494 of The Indian Penal Code, 1860 (hereinafter referred to as IPC) and Respondent No.2-Mohan Singh and Respondent No.3-Nathi Singh Rawat u/s 494 r/w 109 IPC.

Briefly stated, facts of the case are that appellant-Jaspal Singh filed a complaint in the court of CJM, Chamoli-Gopeshwar on behalf of his sister Smt. Shakuntla Devi alleging therein that Respondent No.1-Subedar Surendra Singh Kanwasi with the conspiracy and mal-intention of Respondent No.2 Mohan Singh and Respondent No.3-Nathi Singh Rawat, during the married life period with Smt. Shakuntala Devi, got married again with Smt. Bina daughter of Respondent No.3 and in this way they have committed offence u/s 494 r/w 109 IPC. It was also alleged that Respondent No.1 got married with

sister of appellant Smt. Shakuntala Devi as per Hindu customs in the year 1982 and they were living as husband and wife as per law. After the marriage, Respondent No. 1 filed suits of divorce twice in the court of Civil Court, Chamoli which were dismissed from the court of Sessions Judge. Thereafter, a third suit was filed in the court of Civil Judge, Roorkee which was later on transferred in the Court of Civil Judge, Hardwar and was still pending and after appearing in that case in Hardwar court in the year 1995, appellant came to know that Respondent No.1 had got married again and in a through investigation, it came to his knowledge that the marriage was solemnized with Smt. Bina, daughter of Respondent No.3 Nathi Singh Rawat. It was also stated that Respondent No.1 and Smt. Bina were living as husband and wife and a girl was also born on 19.2.1994 whose name was Babita. It was also stated that the appellant were having some photographs which he had filed in the court below and he could also produced the negatives in the court. It was further stated that when the appellant came to know about the second marriage of Respondent No.1, then the respondents with the help of their some friends, formed an illegal assembly in order to kill the sister of appellant and also to abduct her and they also came in the village of sister of appellant at Vill.Pokhari and the appellant had also filed a report with Patwari Chawki in which investigation was going on.

Thereafter, the charge was framed against Respondent No.1 u/s 494 IPC and against Respondent Nos.2 and 3 u/s 494 r/w 109 IPC. They have denied the charges levelled against them and claimed to be tired. The appellant in support of his case produced P.W.1 Jaspal Singh, P.W.2 Harikrishan and P.W.3 Smt. Shakuntala

The leaned CJM, Chamoli-Gopeshwar after perusing the entire evidence on record vide his judgment and order dated 14.11.1996 acquitted the respondent No.1- Subedar Surendra Singh Kanwasi u/s 494 IPC and Respondent No.2-Mohan Singh and Respondent No.3- Nathi Singh Rawat u/s 494 r/w 109 IPC. Feeling aggrieved against the said judgment and order, the appellant/complainant has filed the present appeal.

I have heard Sri Dinesh Chauhan, learned counsel for the appellant, Sri R.P. Nautiyal, learned counsel for respondent Nos.1 to 3 and Sri Nandan Arya, learned AGA for the State and also perused the judgment and order dated 14.11.1996 passed by the Chief Judicial Magistrate, Chamoli-Gopeshwar.

On 09.09.2005, this Court directed for summoning the lower court record. In compliance, Officer In-charge/C.J.M., Chamoli-Gopeshwar vide his report dated 1.6.2006 has informed that the record of the Criminal Case No.1199 of 1995 has been weeded out as per rules. Sri R.P. Nautiyal, learned counsel for Respondent Nos.1 to 3 and Sri Nandan Arya, learned A.G.A. for the State/Respondent No. 4 stated that after passing of the order dated 14.11.1996 which is under challenge, now the period of 11 years has been expired. Sri Dinesh Chauhan, learned counsel for the appellant, Sri R.P. Nautiyal, learned counsel for Respondent Nos.1 to 3 and Sri Nandan Arya learned A.G.A. for the State/Respondent No. 4 also submitted that now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223, it was held as under.*

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not***

be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."

Even otherwise, after perusing the judgment and order dated 14.11.1996 passed by learned CJM, Chamoli-Gopeshwar, I do not find any illegality or incorrectness in the said judgment and order.

In view of the above, the appeal is dismissed. The judgment and order dated 14.11.1996 passed by CJM, Chamoli-Gopeshwar is confirmed.

(Dharam Veer, J.)

05.09.2007
Rajeev Dang